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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Implementation of Section 17)
of the Cable Television)
Consumer Protection and)
Competition Act of 1992)
)
Compatibility Between)
Cable Systems and Consumer)
Electronics Equipment)

ET Docket No. 93-7

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CONSUMER ELECTRONICS RETAILERS COALITION
REPLY COMMENTS ON NOTICE OF PROPOSED RULE MAKING

Dated: February 16, 1994

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SUMMARY

The Consumer Electronics Retailers Coalition (the "Coalition") respectfully replies to the Federal Communications Commission Notice of Proposed Rule Making. The Coalition includes Best Buy, Circuit City, Dayton Hudson, Montgomery Ward, Tandy, the International Mass Retailers Association, the National Association of Retail Dealers of America, and the National Retail Federation. We present our views on an industry basis because the Commission is facing issues fundamental to the future of consumer electronics retailers and retailing.

We believe that our customers have the following rights, without which the concept of "compatibility" is meaningless:

- The **right to own** communications equipment.
- The **right to choose** from whom equipment is purchased.
- The **right to authorized access to networks** using the equipment of their choice.

Yet, according to some of the Comments filed in this proceeding, these rights should be denied to consumers. We do not believe this was what Congress intended.

We retailers and our customers are the direct and intended beneficiaries of the requirement in Section 624A(c)(2)(C) of the Communications Act that "converter boxes" be available from "retail vendors." The Coalition endorses the Comments filed by its member, Circuit City Stores, Inc., which offered specific and workable guidelines

as to how this congressional mandate ought to be applied to converter boxes by separating the security function from other non-security features. In contrast, several cable industry comments either ignore this command or would turn it on its head.

We are concerned that, despite the Commission's attempts to provide incentives for competition and in-the-clear delivery of signals, cable operators could retain incentives to furnish set-top devices and decoder/descramblers in ways that preclude any retail competition. Comments from cable industry program and hardware suppliers show that this concern is clearly justified. At least some cable operators are intent on stuffing every conceivable competitive feature into their set-top and decoder/descrambler boxes. They cite "security" and "lack of standards" as a reason for the Commission to preempt competition from anyone else. These arguments that security concerns give cable operators the right to be **sole** suppliers of set-top and decoder/descrambler devices are based on the incorrect, self-serving assumption that security functions cannot be isolated from non-security functions. Indeed, The Titan Corporation and others have demonstrated that security functions and network/product features can be developed separately and compatibly.

Although the National Cable Television Association agreed that a national standard for digital compression and transmission is a necessary and achievable goal in this

proceeding, some individual cable industry Comments make legislative and technological arguments against the Commission taking any action in this respect. Neither argument is convincing. Legislative interpretations against standards are not supported by the plain meaning of the 1992 Cable Act nor its legislative history. As to technological arguments, the fact is that the Commission's proceeding on Advanced Television, and the progress of the Moving Pictures Experts Group (MPEG), are leading quickly to standard approaches that can -- and for the sake of compatibility must -- be linked to transmission and compression standards for digital cable television transmissions.

Even if there is no single standard for digital transmission and compression, there are not likely to be many alternatives. The limited number of suppliers and technologies available, the progress of the Grand Alliance in HDTV, and the worldwide acceptance of the MPEG-2 standard indicate that, at most, there will be **only a few** digital set-top and decoder/descrambler configurations for digital transmission and compression of signals. Section 624A(c)(2)(C) still requires that **the Commission ensure that retail vendors have the ability to sell competitive versions of these few configurations.**

The Coalition supports the Comments of Multichannel Communication Sciences, Inc. and others, which urge that separate charges be allowed for devices that provide multichannel descrambling outside the home so as to deliver

all authorized channels "in the clear." In earlier phases of this proceeding, several commenters argued that, because in-the-clear signals save consumers money by eliminating in-home complexity and redundancy, the Commission should provide an **incentive** for the use of such techniques. The Coalition endorses this view, and supports the argument that the Commission should not pose a rate **disincentive** for a technique it so clearly wishes to encourage.

As to the new generation of cable-ready TVs and VCRs, the Commission should reject the arguments of General Instrument Corporation and Tele-Communications, Inc. that the interface so laboriously negotiated between the cable and consumer electronics industries should apply to only those cable services existing at the time the specifications for the Decoder Interface are adopted. That TCI and GI realize, now, that their future **competitive services** may use a different interface shows that **so long as cable operators are permitted to tie security features to competitive features**, their compatibility "offers" are without long-term significance. In their extensive justifications for ignoring the new interface, TCI and GI cite new and exciting features which will leave consumer electronics manufacturers in the dust -- computer graphics accelerator chips, multimedia development languages, etc. etc. **These are precisely the competitive features, contained in converter boxes, that retailers must sell to survive in consumer**

electronics, and that Section 624A(c)(2)(C) says must be available from retail vendors.

The Coalition supports the notion that the Commission require the cable-consumer electronics Joint Engineering Committee to develop the National Renewable Security Standard (NRSS) as the specific implementation of the "Decoder Interface" to which the Commission is committed. In addition to complying with Section 624A(c)(2)(C), it will also afford consumers compatibility equal to that of in-the-clear signals -- a goal that the Commission, in its Notice, has tried to encourage by less direct means.

Finally, the Coalition urges that technical requirements for "cable-ready" TVs and VCRs not be required for devices not marketed or labeled as "cable-ready." As retailers, we are aware, and bear much of the expense, of problems encountered when consumers choose goods not suitable for the intended use. Restricting consumer choice, however, is not the answer. There will be a market for a very long time for TVs and VCRs with existing tuner and interface capabilities. We understand from the record in this proceeding that forcing all sets to include every required cable-ready feature would make them significantly more expensive for our customers. We believe that the consumer education programs described in the Notice and supported by several Comments are adequate; there is no reason to make so many products so much more expensive for so many customers.

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CONSUMER ELECTRONICS RETAILERS COALITION
REPLY COMMENTS ON NOTICE OF PROPOSED RULE MAKING

The Consumer Electronics Retailers Coalition (the "Coalition") respectfully submits these reply comments in response to the Federal Communications Commission ("FCC" or "Commission") December 1, 1993 Notice of Proposed Rule Making ("Notice") in the above-captioned proceeding. The Coalition includes Best Buy, Circuit City, Dayton Hudson, Montgomery Ward, Tandy, the International Mass Retailers Association, the National Association of Retail Dealers of America, and the National Retail Federation. These consumer electronics retailers offer the largest selection of telephone, video, personal computer and related electronics equipment -- at the most affordable prices -- in the world. Previously in this proceeding, Coalition members filed comments separately. We now present our views on an industry basis because the Commission is facing issues fundamental to the future of consumer electronics retailers and retailing.

The Comments filed in response to the Notice present the Commission with a core issue: is there to be a retail marketplace for the telecommunications and information devices that link consumers to the National Information Infrastructure? Or, are such devices to be monopolized by program and information providers?

The issue is presented in both the near term and the long term. In the near term, the Commission has proposed a rate structure that, according to one commenter, would be a rate **disincentive** to in-the-clear transmission. Such a disincentive can only damage the prospects for a competitive marketplace in equipment and features. We favor incentives, rather than disincentives, for in-the-clear techniques.

In the long term, this proceeding will shape the National Information Infrastructure. Some comments urge the Commission to forget about compatibility and the explicit language of the Cable Act^{1/}, and simply hand over a monopoly on consumer electronics devices to cable operators. We file jointly to express our emphatic opposition to this notion.

As retailers, we believe that consumers ought to choose equipment by comparing features, quality and price, side by side. Consumers choosing and using features is the essence of "compatibility." Section 17 of the 1992 Cable Act did

^{1/} The Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 102 Stat. 1460 (amending the Communications Act of 1934 by adding new section 624A, codified at 47 U.S.C. § 544a).

not order compatibility between cable signals and the cable company's in-home hardware. What Congress ordered is compatibility between cable signals and hardware that **consumers** select at retail. The law explicitly states, in what is now Section 624A(c)(2)(C) of the Communications Act, that the Commission's regulations must: "promote the commercial availability, from cable operators and **retail vendors that are not affiliated with cable systems, of converter boxes.**"

We believe that our customers have the following rights, without which the concept of "compatibility" is meaningless:

- The **right to own** communications equipment.
- The **right to choose** from whom equipment is purchased.
- The **right to authorized access to networks** using the equipment of their choice.

According to some of the Comments received by the Commission on January 25, 1994, these rights should be denied to consumers. We do not believe this was what Congress intended.

I. THE COALITION ENDORSES THE COMMENTS OF CIRCUIT CITY STORES, INC.

The Coalition endorses the comments filed by its member Circuit City Stores, Inc. Circuit City expressed concern that, despite the Commission's attempts to provide incentives for competition and in-the-clear delivery of

signals, cable operators would retain incentives to furnish set-top devices and decoder/descramblers in ways that preclude any retail competition. Comments from cable industry program and hardware suppliers show that this concern is clearly justified.

Circuit City argued that there are more specific, efficient, and pro-competitive ways to accomplish the Commission's mandate, by pursuing specific regulatory objectives:

- (1) Only functions directly and necessarily related to security should be reserved to system hardware/software provided by the cable operator;
- (2) Functions that can be offered on a competitive basis must be available competitively, through the offer by the cable operator of compatible hardware or software modules that perform the security function only; and
- (3) Cable operators should be allowed to charge separately for security modules and, to avoid extension of monopoly into competitive markets, should not be allowed to "bundle" the price of competitive hardware with services.^{2/}

The Coalition endorses these principles. Comments asserting that they are impractical or cannot be achieved are based on false assumptions.

II. THE COMMISSION SHOULD REJECT ENTREATIES THAT, CONTRARY TO LAW, IT CEDE A HARDWARE MONOPOLY TO PROGRAM PROVIDERS.

We retailers and our customers are the direct and intended beneficiaries of Section 624A(c)(2)(C)'s

^{2/} Comments of Circuit City Stores, Inc., ET Dkt. No. 93-7, at 5 (Jan. 25, 1994) ("Circuit City Comments").

requirement that "converter boxes" be available from "retail vendors." Several cable industry comments either ignore this command or would turn it on its head.^{3/}

The Circuit City Comments offer specific and workable guidelines as to how this congressional mandate ought to be applied to converter boxes:

[S]uppose that an operator provides a "box" (as either a set-top device or a decoder/descrambler module) that performs: (a) security, (b) digital decompression, and (c) menus and program selection, and suppose the operator offers consumers only this box. There would be little incentive for consumers to buy TVs or VCRs that integrate functions (b) and (c), and no possibility for retailers . . . to sell competitive "boxes" that perform (b) and (c).

Program operators asserting a need for monopoly over signal security function (a) ought

^{3/} Cable industry representatives and suppliers at times deny that, by "converter box," Congress meant to include whatever it is that the Commission is going to regulate. Thus they often are at pains to avoid uttering the words "converter box." They say "set-top operating systems" and "set-top terminal," Statement of Hal M. Krisbergh, President, G.I. Communications Division, General Instrument Corp., Before the Subcomm. on Telecommunications & Finance of the House Comm. on Energy & Commerce, 103d Cong., 2d Sess. at 3 (Feb. 1, 1994) (hereinafter "Krisbergh Testimony"), "set-top box" and "broadband terminals," Comments of General Instrument Corporation, ET Dkt. No. 93-7, at 3-4 (Jan. 25, 1994) ("GI Comments"), or "supplementary devices" and "supplementary equipment," Comments of Tele-Communications, Inc., ET Dkt. No. 93-7, at 3 (Jan. 25, 1994) ("TCI Comments").

What they mean is what Congress meant: "converter box." Only by sheerest sophistry could one argue otherwise. Indeed, on the subject of rate regulation, their argument forces them to acknowledge the scope of what is meant by "converter." Tele-Communications, Inc. describes the panoply of new services such as digital video decompression, advanced program guides, on-screen displays, etc., that TCI means to provide, and approvingly quotes another commenter's point that "[a]s long as there is technological progress, some type of **converter** will be required." TCI Comments at 3 (quoting Continental Cablevision) (emphasis added).

to be required to offer that function in a separate hardware or software module (a), to avoid redundancy with consumer electronics equipment capable of performing (b) and (c). . . .^{4/}

It appears from the comments that at least some cable operators are in fact intent on stuffing every conceivable competitive feature into their set-top and decoder/descrambler boxes. They cite "security" and "lack of standards" as a reason for the Commission to preempt competition from anyone else.

The Comments by General Instrument Corporation ("GI") and Tele-Communications, Inc. ("TCI"), in particular, glimpse a future in which Section 624A(c)(2)(C) is a completely dead letter. TCI asserts flatly that **all** Commission obligations with respect to converters "are adequately addressed by the Notice's short-term proposals."^{5/} GI asserts, essentially, that programmers must always and exclusively supply hardware that is non-standard, and that future cable services should be able to ignore the interface to which the cable industry has only just agreed.^{6/}

In congressional testimony two weeks ago, February 1, 1994, a top GI executive expressed views that can only be

^{4/} Circuit City Comments at 10; see also Reply Comments of the Titan Corporation, ET Dkt. No. 93-7 (Aug. 10, 1993).

^{5/} TCI Comments at 16.

^{6/} GI Comments at 18 (ignoring interface), 30 (avoiding standards), 35 ("grandfather" non-standard systems).

described as completely and directly contrary to the clear requirements of Section 624A(c) (2) (C) :

Retail sale of set-top terminals would be impractical as they are not interoperable with other proprietary operating systems. . . . [C]ommoditization of set-top technology for retail sale would make attempts to insure the security of the system at best very difficult. It would also sacrifice leadership in these important new industries.¹⁷

These views are not just wrong-headed, they are wrong. The argument is based on fallacious assumptions and self-serving reasoning.

A. Security-Based Arguments for Maintaining A Feature Monopoly Are Insubstantial.

The GI Comments, at 9, argue that,

[T]he Commission must realize that attempting to force high levels of compatibility at the expense of the degradation of signal security and/or the stifling of cable technological innovation would impose very significant costs that ultimately would be borne by subscribers.

This argument is based on a string of assumptions:

(1) that "signal security" concerns pertain to **every** element of **every** set-top or decoder/descrambler device, (2) that "compatibility" and "signal security" must be inconsistent goals, and (3) that no steps can be taken to enhance compatibility in a digital environment in the absence of a single national digital standard. GI argues that since the time is not ripe for digital standards, nothing can be done about compatibility.

¹⁷ Krisbergh Testimony, supra note 3, at 7.

We strongly disagree. Even if GI were correct about the undesirability of a single national standard, the Commission need not and should not ignore its unambiguous mandate, under Section 624A(c)(2)(C), to require retail availability of new converters.

1. Signal security concerns do not pertain to every element of a set-top or decoder/descrambler device.

The GI-TCI argument that security concerns give cable operators the right to be **sole** suppliers of set-top and decoder/descrambler devices is based on the incorrect, self-serving assumption that security functions cannot be isolated from non-security functions. The Comments of the Titan Corporation refute this assumption:

[F]rom the standpoint of security, in a properly designed system, one must make a distinction between the **decoding** functions (that are responsive to a non-secure decryption keystream) that may be performed in a non-secure demodulator-decoder-decompression unit and a **cryptographic** function (responsive to secure secret information which changes very infrequently) performed in a secure unit. The workings and operation of the demodulator, decoder (including its response to the keystream) and decompressor can be published, standardized and be supplied subject to genuine market competition.^{8/}

2. Compatibility and signal security are not alternative goals.

If GI were correct that the security and competitive-feature aspects of set-top and decoder/descrambler devices

^{8/} Comments of the Titan Corporation, ET Docket 93-7, at 4 (Jan. 25, 1994) (emphasis in original).

are inseparable, then it would be correct in saying that the Commission would have to choose between security and compatibility if it were to honor Section 624A(c)(2)(C).

But, as Titan and others show, GI's assumption is incorrect.

"Signal security" means responding to encryption, affording **system access** only to those authorized.

"Compatibility" means allowing consumers to **select network features** through their own equipment. The Titan Corporation and others have demonstrated that security functions and network/product features can be developed separately and compatibly. Titan illustrates the point:

[I]t should be clear that in new systems, there is no security reason for the functions of demodulation, decoding and decompression to be duplicated within the decoder and the consumer electronics appliance, just as there are no reasons that the tuner/converter functions be duplicated. Hence [Titan's illustrated architecture] clearly emerges as optimal from the subscriber point of view. . . . There is absolutely no basis to assertions made by some cable industry parties to this proceeding that such standardized and nationally unified access control approaches are inherently less secure than present approaches.^{2/}

Compatibility means more than consigning independent manufacturers and retail vendors to a slow commercial death, selling only those features extant at the time of the 1992 Cable Act, while cable operators and suppliers stuff feature after feature into their monopoly set-top and decoder/descrambler boxes. Rather, it means making the interface **transparent**, so that consumers can choose, in competitive

^{2/} Id. at 5 (emphasis in original, footnote omitted).

environments, both network features and consumer electronics hardware.

By tying security to features, cable operators have created the compatibility problems that triggered this proceeding. By insisting that security and features be tied in the future, cable interests seek to enlist the Commission as an accomplice in frustrating both compatibility and competition. But the knot is not Gordian. To comply with Section 624A(c)(2)(C), the Commission can and must cut this knot.

3. While there should be a single national standard, the Commission can comply with § 624A(c)(2)(C) even in its absence.

The Coalition believes that resistance to a national digital standard for transmission and compression runs contrary to both fact and congressional intent. But assuming the resistance were soundly based, it would not pose a sufficient excuse to justify monopoly rather than compatibility.

Even if there is not to be a single standard for digital transmission and compression, there are not likely to be many alternatives. The limited number of suppliers and technologies available, the progress of the Grand Alliance in HDTV, and the worldwide acceptance of the MPEG-2 standard indicate that, at most, there will be **only a few** digital set-top and decoder/descrambler configurations for digital transmission and compression of signals. Section

624A(c)(2)(C) still requires that **the Commission ensure that retail vendors have the ability to sell competitive versions of these few configurations.**

As we have shown, the security features of set-top and decoder/descrambler devices can and should be segregated from the competitive features. The security-only hardware or software would be provided by the system operator in any case. The only difference made by the absence of a single national digital standard is that, in designing their own versions of competitive feature devices, independent manufacturers and retailers would have to build and market according to more than one standard for transmission and compression.

While several standards are much less desirable than one, Coalition members have considerable experience in offering VHS and 8mm, 3.5" and 5.25" floppy diskettes, "PCs" and "Mac's," etcetera. **Selling to a few standards is far better than being shut out of the market entirely,** leaving the consumer no choice of features, quality, or price at retail.^{10/}

^{10/} GI argued in congressional testimony that until stable standards are achieved, rental is safer than purchasing for consumers. Krisbergh Testimony, supra note 3, at 7. If rental is a better marketing device, Section 624A(c)(2)(C) requires that retail vendors have this option, as well. GI underestimates the ability of the independent private sector to devise marketing approaches that match consumers with systems while moderating any risk of obsolescence of competitive-feature products through rental, exchange, etc.

4. The Commission should require that the security/competitive interface be standardized and documented.

Whether or not the Commission decides to require a single national digital standard for transmission and compression on a timely basis, it should require a well-documented interface between security and competitive features of set-top and decoder-descrambler devices. Instructions to the Electronic Industries Association ("EIA")/National Cable Television Association ("NCTA") Joint Engineering Committee easily could incorporate these goals into the ongoing design work mandated by this proceeding.

Having standardized the security/competitive feature interface, compatibility is easily dealt with even in the absence of a single standard for transmission and compression. The Commission need only ensure that cable operators do not use control over their part of the network to block the retail sale or rental of competitive feature devices offered by independent manufacturers, in competition with operator-provided devices. This will allow true competition for the future features and services that cable commenters have said they intend to build into their set-top and decoder/descrambler devices -- decompression, advance program guides, on-screen displays, etcetera.^{11/}

^{11/} In cases where the operator has complied with Commission regulations, but there is nevertheless only a single source for devices incorporating the competitive features for any standard or system, the Commission should require that such devices be available on a non-discriminatory basis to **retail vendors**. Section 624A(c)(2)(C) explicitly requires no less.

B. Arguments Against a National Standard
for Digital Transmission Are
Insubstantial.

NCTA, through filings by the Cable-Consumer Electronics Compatibility Advisory Group ("CAG"), agreed that a national standard for digital compression and transmission is a necessary and achievable goal in this proceeding.^{12/}

Nevertheless, several cable industry comments make legal and technical arguments against the Commission taking any action in this respect. Neither argument is convincing.

1. A national standard is thoroughly
consistent with congressional
intent.

The TCI Comments, at 31-32, and the GI Comments, at 30-31, argue that for the Commission to oversee the creation of a national standard for compression and transmission would undermine congressional intent. They point to a House amendment that directed the Commission to adopt indeterminate "standards" and to consider the costs and benefits of requiring "technical standards for scrambling or encryption of video programming." Because these directives were not expressly included in the compromise conference bill, they conclude that Congress did not intend the Commission to adopt digital transmission or security

^{12/} Comments of the Cable-Consumer Electronics Compatibility Advisory Group, ET Dkt. No. 93-7, at 22 (Jan. 25, 1994). Yet, the posture of NCTA in this proceeding was misrepresented to the House Telecommunications subcommittee in its February 1, 1994, "set-top box" hearing. See *supra* note 3. Mr. Krisbergh, in answer to a question, stated that the joint work in the CAG was **not** going in the direction of standards.

standards in response to developing technology. This reasoning is flawed.

To begin, this interpretation is not supported by the plain meaning of the 1992 Cable Act. On its face, Section 17 unambiguously provides the Commission with broad discretion to issue regulations "to reflect improvements and changes in cable systems, television receivers, video cassette recorders, and similar technology." Communications Act § 624A(d). It is well established that legislative history should only be considered if the language of the statute is ambiguous.^{13/}

Unexplained committee changes are frequently latent with ambiguity. In one case, for example, the D.C. Circuit observed that "little can be discerned" from committee revisions that replaced specific language with a more general mandate to a federal agency.^{14/} Accordingly, "[c]ourts must exercise caution before drawing inferences regarding legislative intent from changes made in committee without explanation."^{15/} The Ninth Circuit similarly stated that "caution must be exercised in using the

^{13/} E.g., William N. Eskridge, Jr. & Philip P. Frickey, Legislation, 696-97 (1988) (construing, *inter alia*, the majority opinion in Griffin v. Oceanic Contractors, Inc., 458 U.S. 564 (1982)). See generally Note, Why Learned Hand Would Never Consult Legislative History Today, 105 Harv. L. Rev. 1005 (1992).

^{14/} Western Coal Traffic League v. United States, 677 F.2d 915, 923-25 (D.C. Cir.), cert. denied, 459 U.S. 1086 (1982).

^{15/} Id. at 924.

rejection by a legislature of proposed amendments as an aid in interpreting measures actually adopted."^{16/}

Even the authority cited by TCI and GI agrees that adoption or rejection of amendments may not illuminate congressional intent:

An amendment may have been adopted, only because it better expressed a provision already embodied in the original bill or because the provision in the original bill was unnecessary as unwritten law would produce the same result without it. Thus caution must be exercised in using the action of the legislature on proposed amendments as an interpretive aid.^{17/}

From the very inception of Section 17 of the Cable Act, the relationship between compatibility, competition, and standards has been crystal clear.^{18/} The question is **how** the Commission can now proceed in a constructive manner, not whether Congress gave the Commission the authority to do so. The language quoted above, in combination with the direct mandate of Section 624A(c)(2)(C), gives the Commission clear authority that even the NCTA has not questioned. Paragraph 34 of the Commission's Notice clearly and correctly recognizes this authority.

^{16/} Tahoe Regional Planning Agency v. McKay, 769 F.2d 534, 538 (9th Cir. 1985).

^{17/} 2A Sutherland Statutory Construction § 48.18, at 369 (5th ed. 1992) (emphasis added).

^{18/} See 138 Cong. Rec. S583 (daily ed. Jan. 29, 1992) (statement of Senator Leahy regarding benefits to consumers from "lively and vigorous" competition and user-friendly choices).

2. The Commission should require a link between a process for national cable standards and the Grand Alliance process for digital HDTV broadcast standards.

The Commission, the CAG, and many individual commenters have endorsed the necessity of a national standard for the transmission and compression of digital cable signals. But several individual comments fight a rear-guard action behind rhetoric about "not freezing technology." On the one hand they argue that diversity will continue to bring advances and benefits to consumers. On the other hand they, already, begin to ask that the Commission "grandfather" their non-standard approaches, tacitly admitting that "diversity" may mean saddling their customers with non-standard systems.^{19/}

The fact is that the Commission's proceeding on Advanced Television, and the progress of the Moving Pictures Experts Group (MPEG), are leading quickly to standard approaches that can -- and for the sake of compatibility must -- be linked to transmission and compression standards for digital cable television transmissions. The Coalition endorses the proposal made by one consumer electronics commenter:

[T]he Commission should decide, in this phase of this proceeding, to link a standard for digital cable TV hierarchically and procedurally to the broadcast standard for HDTV. It should be possible to finalize and document such hierarchical standards for digital cable TV within one year of the completion of the analogous step in the HDTV process. Making this simple commitment,

^{19/} GI Comments at 35-36.

now, will avoid the investment of billions of dollars in incompatible systems, and provide clear guidance and predictability, for industry, with respect to all aspects of the standardization process.^{20/}

C. The Commission Should Reject the Notion That New Cable Services Need Not Conform to the Decoder Interface.

Retailing has struggled for years to rid its industry of the practice known as "bait and switch." (Agreeing to sell one set of goods then trying to substitute something else.) It is not a phrase we enjoy hearing. But there seems no other way to characterize the arguments made in the TCI and GI comments that the interface so laboriously negotiated between the cable and consumer electronics industries should apply to "only those cable services existing at the time a particular version of EIA/ANSI 563 is implemented."^{21/}

Members of the Coalition participated, as observers, in the CAG process until a smaller joint drafting committee was formed. It was clear to any observer (even if one did not attend meetings) that the joint policy recommendations that emerged in July, 1993 were the result of a compromise and trade-off: the consumer electronics side accepted half-measures for the near term, in exchange for a commitment by

^{20/} Comments of Mitsubishi Electronics America, Inc., Dkt. No. 93-7, at 9 (Jan. 25, 1994) ("Mitsubishi Comments").

^{21/} TCI Comments at 22 (emphasis in original); see also GI Comments at 18-22.

the cable industry to recommend and pursue digital standards for the longer term.

More specifically, the cable industry assured a skeptical consumer electronics industry that had been badly "burned" by cable's early abandonment of the original EIA/ANSI 563 that this time things would be different. This time, cable would endorse a requirement that cable operators actually support and use the interface that the electronics manufacturers would have to build into their equipment.

That TCI and GI realize, now, that their future **competitive services** may use a different interface shows that **so long as cable operators are permitted to tie security features to competitive features**, their compatibility "offers" are without long-term significance. In their extensive justifications for ignoring the new interface, GI and TCI cite new and exciting features which will leave consumer electronics manufacturers in the dust -- computer graphics accelerator chips, multimedia development languages, etc. etc.^{22/} **These are precisely the competitive features, contained in converter boxes,**^{23/} **that retailers must sell to survive in consumer electronics, and**

^{22/} See GI Comments at 20 & n.34.

^{23/} In this discussion GI approvingly quotes a comment that "some type of converter" will always be required, making crystal clear that the "broadband terminals" referred to here are the **same "converter boxes"** that Section 624A(c)(2)(C) provides must be available from retail vendors. Id. at 20 n.33.